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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,686	07/01/2003	Rodger H. Rast	VideoCloakingRAST070103	4393

7590 11/16/2006
Raster Corporation
11230 Gold Express Drive
Gold River, CA 95670

EXAMINER

HUNG, YUBIN

ART UNIT	PAPER NUMBER
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2624

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,686

Applicant(s)

RAST, RODGER H.

Examiner

Yubin Hung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

- I. Species related to claims 1-13, drawn to an apparatus or system (in class 382) capable of discerning a person from an image
- II. Species related to claims 14-17, drawn to an apparatus (in class 455) comprising a transmitter and multiple receivers

2. The species are independent or distinct because they are directed to related processes. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have a materially different design, mode of operation, function, or effect because one (I) is directed to analyzing an image to select the best profiles while the other (II) is directed to the creation of profiles. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

5. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the

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record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

7. During a telephone conversation with Mr. Rodger H. Rast on 11/06/06 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

DETAILED ACTION

Drawings

8. The drawings are objected to because they are hand-sketched and are not easy to read. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

9. The specification is objected to because a brief description of the drawings is missing. (See MPEP § 608.01(f): A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.)

10. Claim 6, line 6: for clarity, consider changing "available images" to "available hairstyle images" (see P. 68, paragraph 228, lines 1-5 of the specification)

11. Claim 12, line 2: consider changing "generally" to "general"

Appropriate correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 5-13 are rejected under 35 U.S.C. 112; second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 5 recites "said hairstyle image" in the last line and it is not clear whether the reference is made to the hairstyle image of line 3 or line 8 and therefore the metes and bounds of the claim cannot be ascertained. Dependent claims 6-13 are similarly rejected. **[Note: For examination purpose the hairstyle images of line 3 is assumed since the retrieved images are already in the database and need not be stored again.]**

14. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 11 recites "conventional appointments" in line 2 with defining what conventional means either in the specification or in the claim. Therefore the metes and bounds of the claim cannot be ascertained.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Li (US 6,912,313).

Regarding claim 1, Li discloses an apparatus comprising

- an image capture device
[Fig. 1, ref. 22; Col. 3, lines 13-14]
- a digital signal processor configured for operating on the video stream from said image capture device
[Fig. 1, ref. 24 and Col. 3, lines 17-18 (digital signal processor)]
- programming executable on said digital signal processor for discerning the portion of the image representing the user from the background images and replacing at least portions of said background image with a user selected background
[Fig. 1, refs. 24, 30-34 and Col. 3, lines 20-30 (executable for replacing background); Fig. 2, refs, 2A & 2B and Col. 2, line 66-Col. 3, line 4 (discerning participant, or user, in a video conference from the background)]

17. Regarding claim 2, Li further discloses

- wherein said background image can comprise a static image, an animated stream, or a video stream
[Fig. 2; Col. 3, lines 4-6 (replacing with animation)]

18. Claim 5 is rejected under 35 U.S.C. 102(e) as being anticipated by Yoshida (US 2002/0198732 A1).

Regarding claim 5, Yoshida discloses

- a digital camera adapted for obtaining images of patron hairstyles

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[Fig. 1, ref. 3; Fig. 2, ref. 27; Fig. 8, ref. S107; P. 2, paragraph 26; P. 4, paragraph 65. Note that the user's image includes his/her hairstyle]

- a user interface
[Fig. 1, refs. 1 & 2; Fig. 2, ref. 26. Note that keyboards and monitors are typically used as user interface]
- a computer operably connected to said digital camera
[Fig. 2, ref. 21 (CPU connected to camera 27); P. 2, paragraphs 39-41]
- programming operable on said computer for
[Fig. 1, refs. 4-9 (programming); Fig. 2, refs. 21 (CPU, or computer) & 22 (memory); P. 2, paragraphs 26-31, 40 & 41 (programming operable on CPU)]
 - identifying a patron,
[Figs. 4 & 5 (patron information, including identification); Fig. 8, refs. S101 & S102 and P. 3, paragraphs 49-52, 59 & 60 (identifying patron). Note that S101 implicitly identifies the patron (in order to determine whether it's the first visit) and S102 identifies the patron by acquiring patron information]
 - retrieving previous hairstyle images of said patron from a database
[Fig. 8, ref. S106 and P. 4, paragraph 64 (retrieving previous hairstyle images)]
 - storing said hairstyle image in said data base
[Fig. 1, ref. 10; Fig. 5, bottom table, last two columns and P. 3, paragraph 52 (database 10 containing patron's hairstyles). Fig. 8, refs. S107-S111 and P. 4, paragraphs 65-70 (storing hairstyle images, among other things, in database 10)]

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 6,912,313) as applied to claims 1 and 2 above, and further in view of Gatto et al. (US 2003/0037335).

Regarding claim 3, Li discloses all limitations of its parent, claim 1. Li further discloses a processor [Fig. 1, ref. 30].

Li does not expressly disclose the following:

- That the processor is a control processor configured with programming for capturing user settings for the time and channel over which video and/or audio content is to be received for the system

However, Gatto discloses capturing programmed events that include settings such as the time and the channel over which video content is to be recorded (implying received) [P. 14, paragraph 142, lines 10-16].

Li and Gatto are combinable because they both have aspects that are from the same field of endeavor of segmentation.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Li with the teaching of Gatto as recited above. The motivation would have been to make the system more user-friendly (and therefore more attractive as a product) by allowing one to program (e.g., for the recording) one or more future events in advance so one does not have to be present at the desired time to configure the system, as would have been obvious to one of ordinary skill in the art at the time of the invention.

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Therefore, it would have been obvious to combine Gatto with Li to obtain the invention as specified in claim 3.

21. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 6,912,313) as applied to claims 1 and 2 above, and further in view of Murakami et al. (US 6,798,834).

Regarding claim 3, Li discloses all limitations of its parent, claim 1.

Li does not expressly disclose the following, which is disclosed by Murakami:

- wherein said discerning operates in response to multiple cues selected from the group of visual object-to-background cues consisting of feature detection, edge detection, focal length, detected motion, and pattern matching from data collected during a calibration interval [Fig. 1, refs. 1 & 2; Fig. 2, refs 201, 202 (human figures to be discerned); Col. 6, line 44-Col. 7, line 5 and Col. 8, lines 7-19 (using edge detection, pattern recognition and motion for discerning). Note that the time needed for discerning is considered a calibration interval since it is used to learn from the contents (e.g., a person) of the image, as per P. 6, last four lines of the specification]

Li and Murakami are combinable because they both have aspects that are from the same field of endeavor of image segmentation.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Li with the teaching of Murakami as recited above. The motivation would have been improve the system's performance by being able to assign importance to

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different segments (e.g., of persons) of an image, as Murakami indicates in column 7, lines 50-53 and column 8, lines 3-19].

Therefore, it would have been obvious to combine Murakami with Li to obtain the invention as specified in claim 4.

22. Claims 6, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (US 2002/0198732 A1) as applied to claim 5 above, and further in view of King et al. (US 2003/0107760 A1).

23. Regarding claim 6, Yoshida discloses all limitations of its parent, claim 5. In addition, Yoshida further discloses a web site of the hair salon [Fig. 1, ref. 11 (Internet); P. 2, paragraphs 30, 35 & 36; note that obviously the web site comprises at least the first (public) part as the home page typically is] with programming for retrieving and selecting desired (i.e., preferred) hairstyle images [Fig. 1, refs. 4 & 10-14; P. 2, paragraphs 30, 35 & 36; note that lines 3-8 imply that the programming for retrieving and selecting resides in apparatus 14].

Yoshida does not expressly disclose that the web site has a second part accessible only to patrons with programming for logging in patrons for retrieving and indicating preferred images, nor that the retrieved hairstyle images are those of the patron's.

However, King discloses a web site with a part that's only accessible by patrons (as it requires logging in) [Fig. 2, ref. S6; Fig. 4; P. 4, paragraph 71. Note that the part accessed by the ID information constitutes the second part and that programming for logging-in is inherent.] In addition, Yoshida further discloses retrieving the patron's face (which includes hairstyle) images [Fig. 8, ref. S106 and P. 4, paragraph 64 (retrieving previous hairstyle images)] and it would have been obvious to have a patron also to retrieve his own (previous) hairstyle images, along with other hairstyle images, since his/her favorite hairstyles may be among those he/she previously wore and doing so would provide the patron with a more complete set of hairstyles to choose from.

Yoshida and King are combinable because they both have aspects that are from the same field of endeavor of web-based image transfer.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Yoshida with the teaching of King as recited above. The motivation would have been to allow a patron to access information about him/her (e.g., his/her hairstyle images) in a secure manner in order to protect the patron's privacy, as would have been obvious to one of ordinary skill in the art at the time of the invention.

Therefore, it would have been obvious to combine King with Yoshida to obtain the invention as specified in claim 6.

24. Regarding claim 12, Yoshida further discloses providing a database of general hairstyle images [Fig. 1, ref. 11; P. 2, paragraph 31] and allowing said patron to indicate one or more images that are either indicative of a similar style or aspect of that style desired, or a style or style aspects that the patron wants to stay clear of [Fig. 1, refs. 11-13; P. 2, paragraph 30].

25. Regarding claim 13, note that per Fig. 8, ref. S108 and P. 4, paragraphs 66 Yoshida's system already allows comments to be associated with patron information (including images) and per the analysis of claim 12 above it also allows a patron to view and select hairstyle images. Therefore it would have been obvious to one of ordinary skill in the art to extend such commenting capability to the patron. The motivation would have been to promote communication with patrons in order to provide a better service.

26. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (US 2002/0198732 A1) and King et al. (US 2003/0107760 A1) as applied to claims 6, 12 and 13 above, and further in view of Echerer et al. (US 5,740,267).

Regarding claim 7, the combined invention of Yoshida and King discloses all limitations of its parent, claim 6.

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The combined invention of Yoshida and King does not expressly disclose that indicating preferences comprises the sorting of images. However, Echerer discloses sorting the images related to a person by the field of a preference [Fig. 8; Col. 8, lines 38-41].

The combined invention of Yoshida and King is combinable with Echerer because they both have aspects that are from the same field of endeavor of image database.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the combined invention of Yoshida and King with the teaching of Echerer as recited above. The motivation would have been to facilitate the selection of a preferred image, as one of ordinary skill in the art would have known.

Therefore, it would have been obvious to combine Echerer with Yoshida and King to obtain the invention as specified in claim 7.

27. Regarding claim 8, Echerer further discloses associating text with images [Col. 8, line 61 ("adding text")] and the motivation would have been to provide information pertinent to the images.

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28. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (US 2002/0198732 A1) and King et al. (US 2003/0107760 A1) as applied to claims 6, 12 and 13 above, and further in view of Dutta et al. (US 2003/0004772 A1).

29. Regarding claim 9, the combined invention of Yoshida and King discloses all limitations of its parent, claim 6.

The combined invention of Yoshida and King does not expressly disclose adapting the programming to accept appointments. However, Dutta discloses a system that accepts patrons' appointments over the Internet [Fig. 1; Fig. 4, ref. 35; P. 3, paragraph 29, lines 1-8].

The combined invention of Yoshida and King is combinable with Dutta because they both have aspects that are from the same field of endeavor of Internet-based communication.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the combined invention of Yoshida and King with the teaching of Dutta as recited above. The motivation would have been to allow patrons to make appointment even when no one is available to answer the phones and therefore increase business opportunities, as would have been obvious to one of ordinary skill in the art at the time of the invention.

Therefore, it would have been obvious to combine Dutta with Yoshida and King to obtain the invention as specified in claim 9.

30. Regarding claim 10, Dutta further discloses communicating desired arrival day if appointments may not be set. [Fig. 4, refs. 36 (when appointment cannot be set); Fig. 5, ref. 50 (desired arrival day); P. 3, paragraph 29, lines 8-16; P. 4, paragraph 33, lines 1-5. Note that a desired arrival day is an arrival day and it is obvious that a system that can accept a desired arrival day can also accept any kind of arrival day.]

31. Regarding claim 11, Dutta further discloses a system that allows a patron to queue up for a particular day and time if conventional appointments are not available. [Fig. 4, refs. 37 & 38 (queuing up); Fig. 5, refs. 50 & 51 (desired day and time); P. 3, paragraph 29, lines 13-21; P. 4, paragraph 33, lines 1-5.]

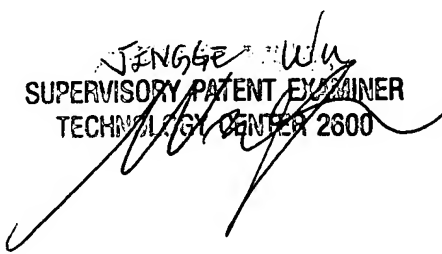
Contact Information

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yubin Hung whose telephone number is (571) 272-7451. The examiner can normally be reached on 7:30 - 4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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November 9, 2006